

No. 14-1169 RE

1. Belman holds a bachelor of science degree in computer information systems, which he earned in 1999 from DeVry University. He formerly worked as a computer programmer.

2. Around 2005 or 2006, Belman got divorced and lost custody of his children. He began to use methamphetamine.

3. In August 2006, Belman was arrested. On October 19, 2006, he was indicted on charges of conspiracy to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A) and possession of a firearm by an unlawful user of methamphetamine in violation of 19 U.S.C. §§ 922(g)(3) and 924(a)(2).

4. Belman had purchased the gun legally, and at the time of his arrest it was in a safe at his home. His ownership of it was illegal only because he was a methamphetamine user.

5. On February 1, 2007, in the United States District Court for the Western District of Missouri, Belman pled guilty to the above criminal offenses.

6. On May 10, 2007, the U.S. District Court imposed sentences for the commission of the above offenses. Belman was committed to the United States Bureau of Prisons for 90 months for each offense, to be served concurrently, followed by five years of supervised release (five years for the conspiracy offense and three years for the firearm offense, to run concurrently).

7. While in prison, Belman went through an intensive residential drug treatment program and took classes to help him learn to cope with stress.

8. Belman was released from prison to a halfway house in March 2013. He was released from the halfway house in July 2013.

9. Beginning in July of 2013, Belman was a participant in a voluntary re-entry court program that required a high level of accountability and involved intensive supervision, weekly drug treatment, the presentation of a relapse prevention plan, and the performance of community service.

10. Upon completion of the re-entry court program, the Court reduced Belman's term of supervised release from five years to three years. He will continue on supervised release until 2016.

11. Belman no longer uses drugs or alcohol.¹ He has been sober since 2007 and attends church and Celebrate Recovery meetings held at the church.

12. Belman volunteers at a food pantry. He sees people who are less fortunate than he and who are still addicted to drugs and alcohol. This volunteer work helps him remain sober.

13. Since his release from prison, Belman has become current in his child support obligations and is once again involved in his children's lives.

14. Belman began working as a leasing agent for a real estate broker in July 2013. He has been successful in that work. The business' owner/broker strongly supports his effort to obtain a real estate license. She has provided financial support to Belman for that effort.

Conclusions of Law

We have jurisdiction to hear Belman's complaint. Sections 339.080 and 621.045.² We decide the issue that was before the MREC, *Department of Soc. Servs. v. Mellas*, 220 S.W.3d 778, 782-83. (Mo. App. W.D. 2007), which is Belman's application. When an applicant for licensure files a complaint, the agency's answer provides notice of the grounds for denial of the application. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D. 1984).

¹ At the hearing, Belman admitted that he had twice pled guilty to driving under the influence, in 1999 and 2001. For each of these offenses he received a suspended imposition of sentence and a year of probation. He successfully completed each probationary period. We do not consider these offenses as additional cause to deny his license application because they were not included in the MREC's answer. *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo. App. E.D. 1984). Even if we did, they would not change our decision given Belman's now lengthy history of sobriety and participation in addiction recovery activities.

² Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

Belman has the burden to show that he is qualified for licensure under the laws and regulations relating to the profession of real estate salesperson. Section 621.120, RSMo 2000. If he makes that showing, he is entitled to a license unless the MREC shows that it has cause to deny his application. If the MREC carries that burden, we then exercise the same authority that has been granted to the MREC and make the decision whether to grant the application *de novo*, exercising the discretion originally granted to the MREC. *State Bd. of Regis'n for the Healing Arts v. Trueblood*, 324 S.W.3d 259, 264-67 (Mo. App. W.D., 2012).

In weighing the evidence, we consider the credibility of witnesses, and we are free to believe all, part, or none of the testimony of any witness. *Dorman v. State Bd. of Registration for the Healing Arts*, 62 S.W.3d 446, 455 (Mo. App. W.D., 2001). We found Belman to be credible.

I. Cause For Denial

The MREC contends that Belman lacks the qualifications for licensure under § 339.040 and 20 CSR 2250-3.010(1), and that there is cause to deny his application under § 339.080 and § 339.100.2(16), (18), and (19).

A. Qualifications for Licensure

Section 339.040 provides:

1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that they:
 - (1) Are persons of good moral character; and
 - (2) Bear a good reputation for honesty, integrity, and fair dealing; and
 - (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

Regulation 20 CSR 2250-3.010(1) provides:

1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that they are persons of good moral character; bear a good reputation for honesty, integrity, and fair dealing; and are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

We consider moral character, reputation, and competence to safely transact the business of a salesperson together because the MREC has alleged that Belman lacks each of these qualifications for the same reasons: his guilty pleas, the seriousness of the conduct pled to, and his current probationary status.

Reputation is the “consensus view of many people[.]” *Haynam v. Laclede Elec. Coop.*, 827 S.W.2d 200, 206 (Mo. banc 1992). It is “the general opinion . . . held of a person by those in the community in which such person resides[.]” *State v. Ruhr*, 533 S.W.2d 656, 659 (Mo. App., K.C.D. 1976) (quoting Black’s Law Dictionary, Rev. 4th ed. 1467-68)). Competent is defined as “possessed of or characterized by marked or sufficient aptitude, skill, strength, or knowledge[.]” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY, 463 (unabr. 1986). The statutory definition of “incompetence” further refines this definition to relate to “actual occupational ability” and to the “actual ability of a person to perform that occupation.” Section 1.020(9).

Belman presented evidence in the form of letters from his owner/broker, the federal magistrate presiding over the re-entry court program, his probation officer, and the manager of the food pantry where he volunteers. Because the MREC waived its objection to the hearsay contained in the letters, we may consider their contents for the truth of the matter of Belman’s reputation, character, and competence. *See Clark v. FAG Bearings Corp.*, 134 S.W.3d 730, 736

(Mo. App., S.D. 2004), citing *Dorman*, 62 S.W.3d at 454 (where no objection is made, hearsay evidence in the records can and must be considered in administrative hearings).

Although four letters may not represent the “general opinion” of Belman, they are some evidence that he bears a good reputation within the community of people who know him, and the MREC presented no contradictory evidence. His owner/broker states in her letter that Belman is one of the best leasing agents she ever employed, and that he receives many compliments from landlords and tenants alike. She also states that he has taken great steps to learn the real estate business, and passed his real estate examination the first time he took it. She supported him financially in his effort to gain a salesperson’s license. We take this evidence, along with Belman’s own testimony, as an indication that Belman has a good reputation for integrity and fair dealing, and that he is competent. Again, the MREC presented no contradictory evidence. We conclude that Belman has shown he is competent and has a good reputation.

When we consider the issue of good moral character, we are guided by § 314.200, RSMo 2000, which states:

No board or other agency created pursuant to laws of the state of Missouri, or by any city, county or other political subdivision of the state, for the purpose of licensing applicants for occupations and professions may deny a license to an applicant primarily upon the basis that a felony or misdemeanor conviction of the applicant precludes the applicant from demonstrating good moral character, where the conviction resulted in the applicant’s incarceration, and the applicant has been released by pardon, parole or otherwise from such incarceration, or resulted in the applicant being placed on probation and there is no evidence the applicant has violated the conditions of his probation. The board or other agency may consider the conviction as some evidence of an absence of good moral character, but shall also consider the nature of the crime committed in relation to the license which the applicant seeks, the date of the conviction, the conduct of the applicant since the date of the conviction and other evidence as to the applicant’s character.

Under this statute, the fact that Belman was convicted of a felony, or that he is still on probation, does not preclude him from demonstrating that he has good moral character.

Good moral character is honesty, fairness, and respect for the law and the rights of others. *Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo. App. W.D. 1997). When the licensing agency proves a criminal conviction, we determine the applicant's moral character from his conduct, present reputation, evidence of any rehabilitation, and upon a consideration of the entire set of facts. *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., K.C.D. 1974). *See also State Bd. of Regis'n for the Healing Arts v. DeVore*, 517 S.W.2d 480, 486 (Mo. App., K.C.D. 1974).

It is apparent from the record before us that Belman has made significant strides toward successful rehabilitation. Since entering his guilty pleas, he has completed several programs for the treatment of addiction, and he continues to attend meetings that address recovery and the maintenance of sobriety. He has been sober since 2007.

In Belman's testimony, he stressed the changes he has made in his approach to life and its inherent complications by learning better coping skills. He testified that he does not wish to be defined by his past conduct and distanced himself and his present reputation from his crimes by explaining they were not representative of his true character. He stated that his life is now productive and profoundly different from what it was in 2006.

The letters from Belman's character witnesses support Belman's depiction of himself. His owner/broker stated he was "not the same person that went to prison many years ago," and that he received many compliments from owners and tenants. From this we infer that he is honest and fair in his dealings with them. The magistrate presiding over the re-entry court program stated Belman was very pleasant and had set himself apart through his initiative to

improve his skills and education in order to obtain better employment. His probation officer described him as respectful and hard working. The food pantry manager described Belman as dependable. These traits also indicate that Belman is respectful of the rights of others. Belman's payment of his child support arrearage is also evidence of his respect for the law.

Belman committed his crimes in 2006 – nearly nine years ago. While he is still on probation, he is not only compliant with its conditions, but the term of his probation has been reduced. Since his conviction, he has actively worked toward recovery and rehabilitation. We conclude he has shown that he has good moral character.

Belman has met his burden of proving that he is a person of good moral character; bears a good reputation for honesty, integrity, and fair dealing; and is competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public. He meets the qualifications for licensure.

B. Discretionary Causes for Denial

Section 339.080 states:

1. The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100

Section 339.100 sets forth causes for discipline:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

- (16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

2. Grounds for Refusal – Subdivision (16)

We have already discussed the grounds for refusal above. Belman proved he met the qualifications for licensure. There is no cause for denial under § 339.100.2(16).

3. Criminal Offenses – Subdivision (18)

i. Reasonably Related

The MREC argues the crimes of conspiracy to distribute 50 grams or more of methamphetamine and possession of a firearm by an unlawful user of methamphetamine are reasonably related to the qualifications, functions or duties of a real estate agent.

To relate is to show or establish a logical or causal connection. WEBSTER’S at 1916. “Reasonable” means “being or remaining within the bounds of reason: not extreme: not excessive;” and “not conflicting with reason: not absurd: not ridiculous.” *Id.* at 1892. We conclude that for a criminal offense to be reasonably related to the qualifications, functions or duties of a profession, the relationship between the offense and the profession must be logical and not strained or exceedingly tenuous.

Unlike our discussion above, subdivision (18) does not require a finding that Belman actually lacks good moral character, but merely that the criminal offenses to which he pled guilty

are reasonably related to the qualifications, functions, and duties of a real estate agent, which include good moral character. Narcotics dealing is a crime involving moral turpitude. *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 709 (Mo. App., E.D. 1989). Thus, we conclude the offense of conspiracy to distribute methamphetamine is reasonably related to the qualifications of a real estate salesperson. Because 19 U.S.C. § 922(g)(3) makes possession of a firearm illegal solely because a person's status as an illegal drug user, we do not find that offense necessarily indicates a lack of good moral character, or that it is otherwise reasonably related to the qualifications, functions, or duties of a real estate salesperson.

There is cause for denial under § 339.100.2(18).

ii. Moral Turpitude

The MREC argues Belman's criminal offenses involved moral turpitude. Moral turpitude is:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything "done contrary to justice, honesty, modesty, and good morals."

In re Frick, 694 S.W.2d 473, 479 (Mo. banc 1985) (quoting *In re Wallace*, 19 S.W.2d 625 (Mo. banc 1929)). In *Brehe v. Missouri Dep't of Elementary and Secondary Education*, 213 S.W.3d 720 (Mo. App. W.D. 2007), a case that involved discipline of a teacher's certificate under § 168.071 for committing a crime involving moral turpitude, the court referred to three classifications of crimes:

- (1) crimes that necessarily involve moral turpitude, such as frauds (Category 1 crimes);
- (2) crimes "so obviously petty that conviction carries no suggestion of moral turpitude," such as illegal parking (Category 2 crimes); and

(3) crimes that “may be saturated with moral turpitude,” yet do not involve it necessarily, such as willful failure to pay income tax or refusal to answer questions before a congressional committee (Category 3 crimes).

Id. at 725. The court stated that Category 3 crimes require consideration of “the related factual circumstances” of the offense to determine whether moral turpitude is involved. *Id.*

Belman purchased his gun legally and kept it in a safe. We find that his gun possession offense was a category 3 crime and that there is no proof that the circumstances of his possession involved moral turpitude. But conspiracy to distribute methamphetamine is a Category 1 crime and necessarily involves moral turpitude. *Berger, id.; In re Shunk*, 847 S.W.2d 789 (Mo. banc 1993). Belman’s conviction of that crime is additional cause for denial under § 339.100.2(18).

4. Other Conduct – Subdivision (19)

The MREC argues that Belman’s application is subject to denial under § 339.100.2(19) for “any other conduct which constitutes untrustworthy, improper or fraudulent business dealings or demonstrates bad faith or gross incompetence[.]” The adjective “other” means “not the same : DIFFERENT[.]” WEBSTER’S at 1598. Therefore, subdivision (19) refers to conduct different than referred to in the remaining subdivisions of the statute. We have found that the conduct at issue is cause for denial under other subdivisions. There is no “other” conduct. Therefore, we find no cause for denial under § 339.100.2(19).

II. Exercise of Discretion

Section 339.080.1 provides that the MREC “may” refuse to issue a license to any person who has engaged in the conduct set forth in § 339.100.2. “Use of the word ‘may’ in a statute implies alternate possibilities and that the conferee of the power has discretion in the exercise of the power.” *McAlister v. Strohmeyer*, 395 S.W.3d 546, 552 (Mo.App. W.D., 2013), quoting *State ex rel. Nixon v. Boone*, 927 S.W.2d 892, 897 (Mo.App. W.D., 1996). Belman’s appeal

vests in this Commission the same degree of discretion as the MREC, and we need not exercise it in the same way. *Trueblood*, 368 S.W.2d at 267.

An applicant claiming rehabilitation should at least acknowledge guilt and embrace a new moral code. *Francois*, 880 S.W.2d at 603. In accordance with § 314.200, we consider the nature of the crimes committed in relation to the license Belman seeks, the date of the conviction, Belman's conduct since the date of the conviction, and other evidence as to his character.

We have, in the past, found applicants for licensure with criminal histories,³ or who used illegal drugs,⁴ to be rehabilitated. Those cases have several commonalities. In all of them, the applicants candidly acknowledged past crimes or conduct, and showed that they had embraced a new moral code. They took responsibility for their actions and demonstrated absolute honesty in admitting their mistakes. The passage of time between the bad conduct and the license application is one, but not the only, factor considered. Along with the passage of time, the applicants presented evidence of progress at work or in school and often changes in lifestyle.

All of these factors weigh in Belman's favor. Belman has acknowledged his past crimes. He has worked hard – and continues to work – to recover from drug addiction. He has changed his environment and associations, and become active in his church and a recovery group. He volunteers at a food pantry. He has paid all of his child support, including the arrearage, and become involved with his children again. He has studied and passed the real estate salesperson's examination, and has worked successfully in that field.

³ See *Redempta M. Kimanzi vs. State Bd of Nursing*, No. 08-2028 BN (August 5, 2009); *John Farrar vs. Missouri Real Estate Appraisers Commission*, No. 08-0912 RA (April 9, 2009); *Michael C. Cooper d/b/a Cooper's Landing vs. Supervisor of Liquor Control*, No. 04-0858 LC (October 21, 2004); *Sharrisse Walls vs. State Bd. of Nursing*, No. 03-1933 BN (April 1, 2004); and *John T. Ryan, D.C. vs. State Bd. of Chiropractic Examiners*, No. 99-0458 CX (January 3, 2000).

⁴ See *Vanessa Ampofo v. State Board of Pharmacy*, No. 08-1202 PH (May 4, 2009); *James A. Brockenbrough v. State Bd. of Regis'n for the Healing Arts*, No. 08-0994 HA (May 4, 2009); and *Christine Ann Trueblood v. State Bd. of Regis'n for the Healing Arts*, No. 09-0795 HA (August 11, 2010); *Finley v. Missouri Real Estate Commission*, No.14-1134 RE (September 25, 2014).

We exercise our discretion and grant Belman's application.

Summary

There is cause to deny Belman's application for licensure under § 339.100.2(18).

Because Belman has demonstrated his rehabilitation, we exercise our discretion and grant his application for licensure as a real estate salesperson.

SO ORDERED on January 14, 2015.

\s\ Karen A. Winn

KAREN A. WINN
Commissioner